

1 DONALDJ.QUERIO(StateBarNo.54367)  
 djq@severson.com  
 2 MARKD.LONERGAN(StateBarNo.143622)  
 mdl@severson.com  
 3 PETERH.BALES(StateBarNo.251345)  
 phb@severson.com  
 4 SEVERSON&WERSON  
 AProfessionalCorporation  
 5 OneEmbarcaderoCenter,Suite2600  
 SanFrancisco,CA94111  
 6 Telephone:(415)398-3344  
 Facsimile:(415)956-0439

7 AttorneysforDefendants  
 8 WELLSFARGOFINANCIAL  
 MISSOURI,INC.,etal.  
 9

10 UNITEDSTATESDISTRICTCOURT  
 11 NORTHERNDISTRICTOFCALIFORNIA  
 12

13 RICHARDHOWARD,  
 14 Plaintiff,  
 15 vs.  
 16 WELLSFARGOFINANCIALMISSOURI,  
 INC.,WELLSFARGOFINANCIAL  
 17 ACCEPTANCE,WELLSFARGOAUTO  
 FINANCE,INC.,WELLSFARGO  
 18 FINANCIALCAR,LLC, andDOES1-50,  
 19 Defendants.

CaseNo.:CO7-05881EDL

**DECLARATIONOFPETERH.BALES  
 INSUPPORTOFWELLFARGO'S  
 OPPOSITIONTOPLAINTIFF'S  
 MOTIONTOCOMPELFURTHER  
 RESPONSESTODISCOVERY**

HearingDate:July22,2008

Time:9:00a.m.

Dept.:E

Judge:Hon.ElizabethD.Laporte

ComplaintDate:November20,2007

21 I,PeterH.Bales,declareasfollows:  
 22

23 1. I am an attorney at law, licensed to practice in the State of California, and I am an  
 attorney with the law firm of Severson & Werson, co-unsel of record for Wells Fargo Defendants.  
 24 I have personal knowledge of the following facts, and if called as a witness, I would testify  
 truthfully with respect to the matters stated herein.  
 25

26 2. On March 1, 2008 Wells Fargo was served with written discovery from plaintiff,  
 which included 39 requests for admission, 6 interrogatories, and 78 document requests.  
 27  
 28

1       3. Prior to responding to the written discovery, Wells Fargo produced its initial  
 2 disclosed documents on March 18, 2008. The initial disclosure documents were responsive to  
 3 many of the document requests at issue in this motion.

4       4. In light of the numerous requests, Isentan email to plaintiff's counsel on March  
 5 28, 2008 to request a two week extension to respond. Plaintiff's counsel declined. He responded  
 6 by insisting that Wells Fargo supply whatever information is requested in the response,  
 7 and that it supplement its responses later. In compliance with this, Wells Fargo served  
 8 its written responses and objections on April 3, 2008, which consisted of polynomial  
 9 documents on April 17, 2008, which consisted of polynomial  
 10 credit disputed department, together with organizational charts requested by plaintiff.

11      5. On April 18, 23, and 24, 2008 plaintiff's counsels sent consecutive letters to Wells  
 12 Fargo iterating that plaintiff would consider Wells Fargo's responses to discovery and its  
 13 document production final and complete as of a certain date if plaintiff's counsel did not hear  
 14 differently. True and correct copies of the April 18, 23, and 24, 2008 letters are attached as  
 15 Exhibits A, B, and C. On April 23, 2008 Isentan et al. to plaintiff stating that Wells Fargo would  
 16 continue to abide by its duty under the Federal Rules of Civil Procedure to supplement and  
 17 correct discovery. A true and correct copy of the April 23, 2008 letter is attached as exhibit D.

18      6. On April 28, 2008 my office received plaintiff's memo and conference letter, which  
 19 demanded responses "in full, without objection by well send," or within four days. A true and  
 20 correct copy of plaintiff's April 28, 2008 letter is attached as exhibit E.

21      7. I emailed plaintiff's counsel on May 5, 2008 requesting a conference call to  
 22 discuss the numerous issues in the letter. I never received a response to this email. On May 7,  
 23 2008 Isentan second request, via letter, stating that "at a minimum, we can (and in fact are  
 24 required to) make an effort to narrow the issues before the Court to decide on any potential motion to  
 25 compel." A true and correct copy of the May 7, 2008 letter is attached as exhibit F. Plaintiff's  
 26 counsel responded in a May 9, 2008 letter that "At the other conference would be a waste of  
 27 time when you have not even thought about the bases for your objections or responses." A true  
 28 and correct copy of the May 9, 2008 letter is attached as exhibit G.

1       8. On May 14, 2008 I sent a four page letter to plaintiff if in an attempt to narrow the  
 2 discovery issues by giving examples of specific examples of requests which Wells Fargo had  
 3 difficulty determining what information or document plaintiff was seeking. The letter also made  
 4 clear that Wells Fargo was making a "final attempt" through this letter to arrange a conference, via  
 5 telephone or in person, "to discuss the discovery issues that remained. A true and correct copy of  
 6 the May 14, 2008 letter is attached as exhibit H. That day plaintiff sent a letter agreeing to a  
 7 conference call.

8       9. Mark Lonergan, a member of Severson and Werson and counsel of record for  
 9 Wells Fargo, and I were on the conference call with plaintiff's counsel on May 14, 2008.  
 10 Throughout the call we attempted to discuss individual requests, including what it was that  
 11 plaintiff was seeking, whether the request could be clarified or narrowed, the basis for Wells  
 12 Fargo's objections, and whether plaintiff would be willing to clarify, withdraw, or narrow  
 13 discovery requests to address those objections. Plaintiff's counsel repeatedly asserted during the  
 14 conference call that all of Wells Fargo's objections were boilerplate, that none of them had any  
 15 merit, that all of plaintiff's discovery requests were overbroad and difficult to understand. Counsel  
 16 refused to clarify or withdraw even one request. Plaintiff's counsel was required to discuss each individual  
 17 request. Counsel took the position that he should not be required to discuss each individual  
 18 request.

19      10. Fairly early on in the conference and during its entirety counsel's demeanor  
 20 became condescending, unyielding, and unproductive. Plaintiff's counsel repeatedly interrupted  
 21 Mr. Lonergan and me, iterating that the discovery requests were clear and understandable. At one  
 22 point counsel asked us whether we could read. Each was unclear, counsel simply read the request aloud;  
 23 read the request a third time. At that point, Mr. Lonergan stated he felt that plaintiff's counsel  
 24 approach was condescending, reached the conclusion at one point counsel asked if he needed to  
 25 end the call. (Lonergan Decl., ¶2.); (Ex. I.) Lonergan stated he felt that plaintiff's counsel  
 26 ended the call that the call would not be productive, and

27      11. Wells Fargo agreed during the conference call to provide amended responses to  
 28 certain discovery requests by May 28, 2008. On May 28, 2008 Wells Fargo served an amended

1 responses to plaintiff's interrogatories and requests for admissions as well as supplemental  
2 responsive documents. A true and correct copy of the supplemental response to plaintiff's  
3 requests for admissions is attached as exhibit J.

4 12. As required Wells Fargo has provided supplemental documents to Wells Fargo's  
5 response to plaintiff's first set of document requests. On June 2, 2008 and June 6, 2008 Wells  
6 Fargo produced responsive documents. To date, Wells Fargo has produced 416 pages of  
7 documents.

8 I declare under penalty of perjury that the foregoing is true and correct. Executed within  
9 the United States on June 24, 2008.

10 By: S/Peter H. Bales  
Peter H. Bales

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28